

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3758 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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V M RATHOD

Versus

DY. INSPECTOR GENERAL OF POLICE COMMUNICATION

Appearance:

MR YN OZA for Petitioner

MR DN PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 26/12/96

ORAL JUDGEMENT

By this petition the petitioner who is a police head constable has prayed for a writ in the nature of mandamus to quash and set aside the order of his transfer

from Mehsana to Okha. The petition came to be admitted on 8th August 1985 after issuance of notice on 16th July 1985 to the other side and respondents did not file affidavit in reply. It appears that the learned Judge was convinced to admit the matter and grant interim relief in favour of the petitioner.

2 This matter was filed in the year 1985. The petitioner was posted at Mehsana somewhere in May 1984. Under ordinary circumstances and under the rule of transfer, any government employee can be transferred after a period of three years to five years. In the instant case, the petitioner is serving at Mehsana station from 1984 till date i.e. 1996 end.

3 The allegations of mala fide in my opinion even in absence of affidavit-in-reply cannot be acted upon inasmuch as they are not substantiated by any substantial evidence. This apart, when the order of transfer is stayed for a period of 11 years, this Court now should not interfere and investigate into the allegations for transfer. This Court should not exercise normally the powers under Article 226 of the Constitution of India in the orders of transfer except in exceptional cases. Admitting that such powers are exercised, then also, as 10-11 years have passed, this Court refuses to exercise such powers and set aside the order of transfer. Hence, the petition is liable to be dismissed. It is hereby dismissed. Rule is discharged. Interim relief stands vacated. No order as to costs.

(mohd)